800.

SUPREME COURT OF THE UNITED STATES.

No. 56.

BANK UNITED STATES, APPELLANT,

vs.

GEORGE W. PETER.

APPEAL FROM THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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Langtree & O'Sullivan, Print.

DISTRICT OF COLUMBIA, *S. C. T.*

The United States of America:

To George W. Peter, Greeting:

You are hereby cited and andmonished to be and appear at a Supreme Court of the United States, on the Monday of next, pursuant to an appeal from the decree of the circuit court of the District of Columbia, sitting as a court of Equity for Washington county, in a cause wherein you and others were complainants, and the President, Directors and Company of the Bank of the United States were defendants, and shew cause if you can why the said decree rendered in the premises should not be corrected and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, chief judge of the circuit court of the District of Columbia.

Issued this 24th day of May in the year of our Lord 1838.

W. CRANCH.

Service acknowledged this 25th May, 1838.

JAMES DUNLOP.

Style of Circuit.

DISTRICT OF COLUMBIA, ss.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty sixth day of the same month in the year of our Lord one thousand eight hundred and thirty eight, and of the Independence of the United States the sixty second.

Present the Honorable, WILLIAM CRANCH, Chief Judge.
BUCKNER THURSTON, } *Asst. Judges.*
JAMES S. MORSELL, }

ALEXANDER HUNTER, ESQ. *Marshall.*
WILLIAM BRENT. *Clerk.*

In the record of the proceedings of the said court among others, is the following, to wit:

[REC. LVI.]—1

Parties.

GEORGE. W. PETERS, et. al.
vs.
RICHARD SMITH, and the
Bank of the United States.

Be it remembered that heretofore, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and thirty seven, the said complainants by James Dunlop and William Redin, Esquires their solicitors, filed in court here the following bill of complaint, to wit:

Bill of Complaint.

To the Honorable the Judges of the circuit court of the District of Columbia for the County of Washington.

The bill of complaint of George W. Peter, the Farmers and Mechanics Bank of George-Town, the President and Directors of the Union Bank of George-Town, Darius Clagett, and George W. Peter, and John P. C. Peter, executors of the last will and testament of Thomas Peter, deceased. Showeth unto your Honors, that on the ninth day of April in the year 1824, George Peter, being largely indebted to sundry persons and bodies corporate, and among others to the complainants by divers promissory notes, upon which said Thomas Peter was the endorser for the benefit and accomodation of the said George Peter, and being desirous of making provision for the payment of his said debts and securing and indemnifying said Thomas Peter of and from the same debts, by his deed of Indenture of that date, conveyed to his brother the said Thomas Peter, and to Robert P. Dunlop in fee simple certain real estate described in said deed, situate in Washington county, in the District of Columbia, upon trust to sell the same and apply the proceeds in payment of said debts, as by reference to the same may more fully appear, the same being filed herewith and prayed to be taken as part of this bill, marked A. (copied in page 13.) That said Robert P. Dunlop on the day of with the assent of the trust creditors, and before any act done by him in acceptance of the said trust released to the said Thomas Peter, all his right and title to the said trust property: as may fully appear, by reference to the said trust deed, marked B. herewith exhibited, and prayed to be taken as afurther part of this bill, (copied in page 20.) And your orators represent that the paper marked C. herewith filed, as a further part of this bill, (copied in page 24,) contains a list of the judgments rendered in your honorable court, against the said George Peter, so far as the same are necessary to be known for the proper determination of the present matter in controversy. And your orators further shew, that in the year 1829, at the request of the trust creditors, of the said George Peter, named in his deed of the 9th April, 1824, the said Thomas

Peter, constituted Richard Smith, cashier of the office of discount and deposite, of the Bank of the United States, in the city of Washington, his agent and attorney, to conduct the sale of the said trust property, and to distribute the same among the creditors entitled thereto, as may be more fully seen, by reference to the paper herewith filed, as a further part of this bill, marked D. (copied in page,) That the sale of the said trust property, was made on the 17th and 18th September, 1829, and produced the sum of which was insufficient to satify, and discharge the said debts mentioned in, and provided for, by said deed, first above recited. And your orators represent, that before the execution of the said deed, of 9th April, 1824, namely, on the 22d April, 1822, the said Union Bank of George-Town, obtained two judgments in your honorable court against said George Peter, the grantor in the said deed, for the sum of $7,934, as security for his brother the late Daniel Peter, and which are not among the debts mentioned in, and provided for, by said deed of trust. That the said judgments, bound the whole real estate of said George Peter, situate Washington county, in the District of Columbia, and were a lien upon the same; that the said Union Bank, insisted upon their said judgments above named being paid, and threatened to issue, and lay executions thereon, upon the property conveyed in trust as aforesaid; that to save such levy, and to effect a sale of the trust property and to make a good title to the purchasers, the several parties interested under said deed, were obliged to consent, that sufficient of the proceeds to arise from the sale of the said trust property, should be advanced and applied to relieve the same from the said judgments, rendered in favor of the said Union Bank, as aforesaid; and accordingly said Richard Smith, as agent and attorney for said Thomas Peter, trustee, as aforesaid, advanced and paid to the said Union Bank, out of the monies received by him, from the sales of the said trust property, the amount of their said judgment, to wit: the sum of and took an assignment, of said judgment, from the said Union Bank, being directed to take said assignment, for the benfit of the trust creditors.

And your orators further show, that after the said sale was made in September, 1829, it was found by the trust creditors, that there were eleven lots of ground, situate in the city of Washington, the property of the said George Peter, which had not been conveyed by his deed, of the 9th April, 1824, but which remained unconveyed, and bona fide, the property of the said George Peter: and in order further to provide indemnity, for the said Thomas Peter, against the said debts, the said George Peter, with the approbation of the said trust creditors, by other deeds, herewith filed, as a further part of this bill, marked F. and G. (copied in page 30, 35,) conveyed the said eleven lots of ground, to the said Thomas Peter, in fee simple upon trust, to sell the same, and to apply the proceeds arising from such sale, in discharge of all judgments, which might have been obtained, against said George Peter, in the order in which said judgments had been obtained, and according to their legal order and priority: as by reference to said last mentioned deeds, may more fully appear. That

the said eleven lots of ground, were sold on the 17th October, 1829, and 14th May, 1830, and produced the sum of $5,228 $\frac{70}{100}$, with interest: which said sum, has been received by the said Richard Smith, as agent and attorney, as aforesaid, and is now in his hands: that of the sum last mentioned, the said Bank of the United States, contending, that the same must be divided equally among all those creditors of the said George Peter, who obtained judgments on the same day against him, subsequent to the said judgments, in favour of the Union Bank, claims the sum of $2,468 $\frac{62}{100}$, as the dividend to which the said bank is entitled, on account of another judgment, rendered in their favor, against the said George Peter, as the endorser of the said John Peter, in the circuit court of said district, for said county, a short copy of which is herewith exhibited, as a further part of this bill, marked H. (copied in page) and which is not included in the said deeds of trust, or either of them, nor was the said Thomas Peter, answerable for the same: and the said bank of the United States, have directed the said Richard Smith, not to pay over the same, to the said trust creditors: and the said Richard Smith has accordingly refused to distribute the same among the said trust creditors. Your orators furthers state, that this last mentioned judgment, of the Bank of the United States, is not one of the debts mentioned in, and provided for, by the said trust deeds, of said George Peter, marked exhibits A. F. and G. and that if the funds, arising from the sale of the said eleven lots, be applied in any degree towards the same, great injustice will be done your orators; they further show, that the whole of the said eleven lots, were bound by the said two judgments, rendered in favor of the said Union Bank, and which were the earliest judgments rendered against the said George Peter, and that executions thereon, could have been laid upon said lots, as the unconveyed property of said George Peter; and they insist, and submit, that as the amount of such judgments, was advanced and paid by the said Richard Smith, out of the funds justly, and properly applicable to the payment of the debts provided for by said deed, of the 9th April, 1824, the said judgments of right, ought to be assigned to, and entered for, the use of the trust creditors, in the deed of the 9th April, 1824, and Thomas Peter their trustee, and the whole proceeds of the sale, of said eleven lots, ought in equity to be applied, as far as the same will go, to reimburse the amount so taken, from the said trust funds, for payment of said Union Bank judgments as aforesaid. And your orators charge, that it was the duty of the said Richard Smith, acting as the agent of the trust creditors, upon the payment and advance made as aforesaid, to the said Union Bank, with the funds of the trust creditors, to have caused the said judgments, to be entered for the use of and benefit, of the said trust creditors. and of said Thomas Peter; but that instead of doing so, he has by the advice and direction, of the said Bank of the United States, illegally, and unjustly, without any authority, from said Thomas Peter, and contrary to his wishes and orders as your orators aver and believe, caused the said judgments to be entered, for the use of the said Bank of the United States, who are

seeking to revive the same, by writs of scire facias thereon, which are now depending in your honorable court, to the great injury of your orator in the premises. They further shew, that as the real property of the said late Thomas Peter, was bound for the debts mentioned in said deed, and as the real estate of the said George Peter, comprised in said deeds, did not produce sufficient to pay the said debts provided for as aforesaid, a large portion of the said real estate, of the said Thomas Peter, of greater amount, than the whole proceeds of sale of said eleven lots, has been sold, and the proceeds thereof applied to make up the deficiency, and these complainants John T. C. Peter, and George W. Peter, further represent that their said late father Thomas Peter, departed this life in the month of April, in the year 1834, having constituted them his executors of his last will and testament; that their said father was the endorser of the notes of the said George Peter, mentioned in exhibit A. as will appear by reference thereto. In consideratian whereof, and for as much as your orators have no adequate remedy at law, to the end that the said Richare Smith, and the said Bank of the United States, may be made defendants to this bill, and may fuily and truly, answer upon oath, the several matters and things herein contained; that the said proceeds of the sale, of the said eleven lots, may be applied by said Richard Smith, together with the interest accrued thereon, from the day received, to the payment of the debts provided for, in and by the said deed of trust, and to the relief of so much of the estate of the said Thomas Peter, as has been applied to make good the deficiency of said George Peter's estate, for payment of said debts, provided for by said deed; and that your orators may have such other, and further relief, as to your Honors may seem best: may it please your Honors to grant subpoena directed to said Richard Smith, and the said Bank of United States, commanding them to be, and appear, &c. and to answer &c. and your orators will pray &c.

JAMES DUNLOP.
WILLIAM REDIN.
For Compts.

Exhibit A.

Exhibit A. referred to in the foregoing bill, page 6.

GEORGE PETER, to THOMAS PETER and ROBT. B. DUNLOP. } Deed recorded 8th October, 1824.

This indenture, made this ninth day of April, in the year of our Lord eighteen hundred and twenty-four, between George Peter, of Montgomery county, in the State of Maryland, of the one part, and Thomas Peter and Robert Peter Dunlop, of George-Town, in the District of Columbia, of the other part, witnesseth: Whereas, the

said George Peter is indebted to the branch bank of the United States in Washington, in the sum of about twelve thousand dollars, upon notes drawn by him and endorsed by Thomas Peter; to the Farmers and Mechanics' Bank of George-Town in the sum of about nine thousand, upon notes similarly drawn and endorsed; to Darius Clagett in the sum of about one thousand dollars; upon note to Isaac S. Nicholls, use of William Marbury, trustee, in the sum of about five hundred dollars; upon note to the Union Bank of George-Town in the sum of about twenty-five thousand dollars, upon notes drawn by the said George Peter, and endorsed by Thomas Peter, all of which are the said George Peter's own personal debts, and justly due from him for value received; and, whereas, the said George Peter is under certain liabilities, as endorser for John Peter, and amongst them as drawer for a note in the branch bank of the United States in Washington, for five thousand dollars, endorsed by the said John Peter and Dr. Charles A. Beatty, which said last mentioned note was originally drawn by John Peter, and is in fact his debt, and for which the said George Peter hath received no value; and, whereas, the said George Peter is also endorser for the said John Peter, upon a note held by the Bank of Columbia, for the sum of nine thousand dollars, for the securing the payment of which said last note, the said John Peter conveyed the house and lot in Cherry street, George-Town, lately occupied by him, to Thomas Peter in trust, who sold the same as trustee, at public sale, and the said George Peter became the purchaser thereof, at and for the sum of five thousand dollars, and hath received a conveyance thereof from the said Thomas Peter; and, whereas, it is the wish of the said George Peter to secure first his own personal debts aforesaid, for which he hath received value, by a conveyance of the whole of the real estate hereinafter mentioned, (excepting the house and lot in Cherry street, for which special provision in the sale and proceeds shall be made in this deed,) and in the next place, to provide by said conveyance, out of the sales of the hereinafter described real estate, for any endorsements or engagements for the said John Peter, for which the said George Peter may be legally bound, and to accomplish these objects, hath appointed, from the confidence he hath in them, the said Thomas Peter, and the said Robert Peter Dunlop as trustees. Now this indenture witnesseth that the said George Peter, for and in consideration of the premises, and in further consideration of five dollars to him in hand paid by the said Thomas Peter and the said Robert Peter Dunlop, at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, hath granted, bargained and sold, and by these presents does grant, bargain and sell, to the said Thomas Peter and Robert Peter Dunlop, their heirs and assigns forever, the following described real estate, lying and being in Washington county, in the District of Columbia, to wit, one half of an undivided tract of land owned by the said George Peter, and the heirs of David Peter, called "Peter's Mill Seat," containing about four hundred and eighty-four acres and five-eighths

of an acre; also part of "Mount Pleasant," two woodland lots west of the Washington race course, containg about
; also, part of "Mount Pleasant," lying east of Columbia College, containing about one hundred acres; also, the following lots in the City of Washington, viz: lot five, in square one; one-third of a lot in square two, as per book of divisions of Robert Peter's heirs; lots one and three, in square five; lot five, in square six; lot two, in square seven; lot one, in square nine; lot two, in square eleven; lot six, in square south of twelve; lots ten, eleven, twelve, thirteen and fourteen, in square fourteen; lot eleven, in square fifteen; lots five and nine, in square seventeen; lot three, in square eighteen; lots eleven and twelve, in square twenty; lots one, three, thirteen and fourteen, in square twenty-four; lot seventeen, in square twenty-five; lots one, two, three, eleven, in square twenty-seven; lots three, four, twenty-six and twenty-seven, in square twenty-eight; lots three and four, in square thirty; lot eleven, in square thirty-one; lots seventeen and eighteen, in square thirty-two; lot sixteen, in square thirty-three; lots eleven, twelve and twenty, in square thirty-seven; lots two, five and six, in square forty; lot twelve, in square forty-one; lot three, in square forty-two; lots one, eight, nine and eleven, in square fifty-one; the whole of square fifty-three; lots twelve, fourteen and fifteen, in square fifty-four; lot four, in square fifty-five; lots ten, eleven, twelve and thirteen, in square seventy; lots eleven, sixteen and seventeen, in square seventy-two; lots six, seven, eight, nine, twelve, seventeen, eighteen and twenty-two, in square seventy-three; lots seven and twenty-five, in square one hundred; lot sixteen, in square one hundred and seventy the whole of square two hundred and three; the whole of square two hundred and seventy-one, and lots five, six and seven, in square three hundred and ninety-three; the whole of square two hundred and thirty-four; and a lot with a three story brick house, in square thirty-eight, making in all , in the city of Washington; also, the following houses and lots in George-Town, to wit: the house and lot the present residence of the said George Peter, fronting one hundred feet on Gay street, running back to Dunbarton street, and about one hundred feet front on Dunbarton street; lot on Washington street, fronting one hundred and twenty feet on Washington street, and sixty feet on Dunbarton street; on Congress street lots twenty-four, thirty-four, thirty-five and forty, as numbered on the plan of divisions of Robert Peter's heirs; lots twenty-eight, thirty-nine, forty-nine, fifty-nine and sixty, on High street, formerly Water street; lot sixty-three, on Causeway street; lot thirty one, on Niagara street, and lot fifty-one on South street; also, the brick house and lot on Cherry street, as described in the deed from John Peter to Thomas Peter, of record in this county, bearing date the fifth day of February, eighteen hundred and twenty-one; to have and to hold all the said described lands, lots and houses to them, the said Thomas Peter and Robert Peter Dunlop, their heirs and assigns, forever, to their only proper use and behoolf, and the use and behoolf of their heirs and assigns, upon the following

trusts, and for the following purposes, that is to say; in trust to sell the said house and lot on Cherry street, in George-Town, as described in said deed from said John Peter to said Thomas Peter, either for cash or upon credit, at public or private sale, as in the direction of said trustees may seem most advisable; and after paying the expenses of the trust, to apply the nett proceeds to the discharge of the note due to the Bank of Columbia, drawn by the said John Peter, and endorsed by the said George Peter; and upon the further trust to sell, either for cash or upon credit, at public or private sale, as in the discretion of said trustees may seem most advisable, all the other described lands, lots and houses in this deed mentioned and described, and out of the proceeds of said sales, having first paid the reasonable costs and charges attending the execution of this trust, to apply the same in the first place, to the payment and discharge of the said George Peter's own personal debts hereinbefore described, to wit, the said debt to the Branch Bank for about twelve thousand dollars, endorsed by Thomas Peter; the said debt to the Farmers and Mechanics' Bank for about nine thousand dollars, endorsed by Thomas Peter; the said debt to Darius Claggett for about one thousand dollars; the said debt to Isaac S. Nicholls, use of Wm. Marbury, for about five hundred dollars; the said debt to the Union Bank of Goorge-Town, endorsed by Thomas Peter, for about twenty-five thousand dollars, in just and equal proportions, having reference to the amount of said debts respectively; in the next place to apply the said proceeds to the payment of the engagements, for which the said George Peter is legally answerable, as security of the said John Peter; and lastly, to pay over the surplus, if any, to the said George Peter, his executors and administrators; and the said trustees are hereby fully authorized and empowered upon making sales, either by public auction or privately, of the whole or any part of the above described real estate, either for cash or upon credit, to convey the same absolutely and in fee-simple to the respective purchasers, their heirs and assigns, by good and sufficient deeds; and the said George Peter for himself, his heirs, executors and administrators, doth hereby covenant and agree to and with the said trustees and their heirs, to make, execute and deliver any other and further deeds or assurances which may be deemed requisite in law, more effectually to convey and assure the said real estate, or any part of it, to the said trustees and their heirs, or to the said purchasers and their heirs, under the said trustees.

In testimony of which the said George Peter hath set his hand and seal the day and year first hereinbefore written.

GEORGE PETER. [SEAL.]

Signed, sealed and delivered in the presence of
DANIEL REINTZEL,
THOMAS CORCORAN.

DISTRICT OF COLUMBIA, *Washington County, sct:*

This ninth day of April, in the year of our Lord eighteen hu dred

and thirty-four, personally appears George Peter, party grantor in the aforegoing deed, before the subscribers, two United States' justices of the peace for the county and district aforesaid, and acknowledges the aforegoing deed to be his act and deed, and the real estate therein mentioned to be the real estate and right and property of the therein named Thomas Peter and Robert Peter Dunlap, their heirs and assigns, for the trusts and purposes therein set forth.

Acknowledged before and certified by us.

DANIEL REINTZELL,
THOMAS CORCORAN.

On the back of the foregoing deed was the following endorsement, to wit:

"Received October 8th, 1824, to be recorded, and the same day was recorded in Liber W. B. No. 12, folios 208, 209, 210, 211, 212 and 213, one of the land records for Washington county, in the District of Columbia, and examined by

W. BRENT, *Clk.*"

Exhibit B.

Exhibit B. referred to in complainant's bill, page 7.

ROBERT P. DUNLOP to THOMAS PETER. } Deed of release, recorded 5th day of June, 1826.

Whereas George Peter did, by his deed of indenture, bearing date the ninth day of April, in the year of our Lord one thousand eight hundred and thirty four, convey to Thomas Peter and Robert Peter Dunlop, certain lots and parcels of land, lying and being in the county of Washington, in the district of Columbia, upon certain trusts, and for certain purposes set forth in said deed, as by reference thereto will appear; and whereas, the said Robert P. Dunlop is unwilling to undertake the execution of said trust, and is desirous to convey to the said Thomas Peter, all the right, title, estate and interest in the said lots of ground and parcels of land specified in said deed of indenture, to, and for the uses, trusts and purposes therein set forth and expressed; and whereas, the said George Peter has been consulted, before the execution of this instrument, and is willing that the same should be made, and the same having also met with the approbation of the other persons interested in said deed of indenture; now, therefore, this indenture witnesseth, that for and in consideration of the premises, and also in consideration of the sum of five dollars in hand paid to the said Robert P. Dunlop, by the said Thomas Peter; the receipt whereof is hereby acknowledged, the said Robert P. Dunlop doth alien, grant, remise, release and confirm unto the said Thomas Peter, his heirs and assigns, all the right, estate and interest which he has in and to the following described real estate, situate in Washington county, in the District of Columbia, viz.

one-half of an undivided tract of land owned by the said George Peter, and the heirs of David Peter, called "Peter's Mill Seat," containing about four hundred and eighty-four acres, and five-eighths of an acre; also, part of "Mount Pleasant," two woodland lots west of the Washington race course, containg about

; also, part of "Mount Pleasant" lying east of Columbia College, containing about one hundred acres; also, the following lots in the City of Washington: lot five, in square one; one-third of a lot in square two, as per book of division of Robert Peter; lots one and three, in square five; lot five, in square six; lot two, in square seven; lot one, square nine; lot two, in square eleven; lot six, in square south of twelve; lots ten, eleven, twelve, thirteen and fourteen, in square fourteen; lot eleven, in square fifteen; lots five and nine, in square seventeen; lot three, in square eighteen; lots eleven and twelve, in square twenty; lots one, three, thirteen and fourteen, in square twenty four; lot seventeen, in square twenty-five; lots one, two, three, eleven, in square twenty-seven; lots three, four, twenty-six and twenty-seven, in square twenty-eight; lots three and four, in square thirty; lot eleven, in square thirty-one; lots seventeen and eighteen, in square thirty-two; lot sixteen, in square thirty-three; lots eleven twelve and twenty, in square thirty-seven; lots two, five and six, in square forty; lot twelve, in square forty-one; lot three, in square forty-two; lots one, eight, and nine and eleven, in square fifty-one; the whole of square fifty-three; lots twelve, fourteen and fifteen, in square fifty-four; lot four, in square fifty-five; lots ten, eleven, twelve and thirteen, in square seventy; lots eleven, sixteen and seventeen, in square seventy-two; lots six, seven, eight, nine, twelve, seventeen, eighteen and twenty-two, in square seventy-three; lots seven and twenty-five, in square one hundred; lot sixteen, in square one hundred and seventy; the whole of square two hundred and three; the whole of square two hundred and seventy-one; and lots five, six and seven, in square three hundred and ninety-three; the whole of square two hundred and thirty-four; and a lot, with a three story brick house, in square thirty-eight; making in all.

, in the City of Washington; also, the following houses and lots in George-Town, to wit, the house and lot, the present residence of the said George Peter, fronting one hundred feet on Gay street, running back to Dunbarton street; lot on Washington street, fronting one hundred and twenty feet on Washington, and sixty feet on Dunbarton street; on Congress street, lots twenty-four, thirty-four, thirty-five and forty, as numbered on the plan of divisions of Robert Peter's heirs; lots twenty-eight, thirty-nine, forty-nine, fifty-nine and sixty, on High street, formerly Water street; lot sixty-three, on Causeway street; lot thirty-one, on Niagara street; and lot fifty-one, on South street; and also the brick house and lot on Cherry street, as described in the deed from John Peter to Thomas Peter, of record in this county, bearing date the fifth day of February, eighteen hundred and twenty-one; to have and to hold the above described property to the said Thomas Peter, his heirs and assigns, forever, to and for the uses, trusts and purposes, subject to the limitations

and restrictions mentioned in said deed of indenture from George Peter to Thomas Peter and Robert Peter Dunlop, heretofore referred to.

In witness whereof I have hereto set my hand and seal, this twenty-sixth day of May, in the year eighteen hundred and twenty-six.

ROBERT P. DUNLOP. [SEAL.]

Teste.

THOMAS CORRORAN,
DANL. BUSSARD.

WASHINGTON COUNTY, *District of Columbia, ss.*

On this twenty-sixth day of May, in the year eighteen hundred and twenty-six, personally appears before the subscribers, two of the justices of the peace for the county and district aforesaid, Robert P. Dunlop, party grantor to the aforegoing deed or instrument of writing, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Witness our hands and seals.

THOMAS CORCORAN. [SEAL.]
DANL. BUSSARD. [SEAL.]

On the back of the foregoing deed was the following endorsement, to wit:

"Received 5th day of June, 1836, to be recorded, and the same day was recorded, in Liber, W. B. No. 16, folios 359, 360, 361 and 362, one of the land records for the county of Washington, in the District of Columbia, and examined by

W. BRENT, *Clk.*

Exhibit C.

Exhibit C. referred to in complainant's bill, page 7.

CENTRAL BANK, use of the FARMERS & MECHANICS' BANK, *vs.* GEORGE PETER. } April term, 1820.

19th April—judgment for $5,000 damages and costs. Damages to be released on payment of $1,300, with interest from 7th August, 1819, till paid.

Cost, - - - -	$11 55
Cost of Protest, - - -	1 75
Ada'l. Cost, - - - -	2 40

Test.

W. BRENT, *Clk.*

UNION BANK OF GEORGETOWN
vs.
GEORGE PETER. } April Term, 1822.

22d April, judgment for $600 damages and costs. Damages to be released on payment of $309, with interest from 1st February, 1820, till paid.

Cost, - - - - $13 20
Revived by sci. fa. to May, 1826.
Cost on sci. fa., - - - 11 37
Add'l cost, - - - 3 64
Sci. fa. to December, 1829.
Costs if off forthwith, - - 8 23
Test:

W. BRENT, *Clerk.*

19th Sept., 1829.

UNION BANK OF GEORGETOWN,
vs.
GEORGE PETER. } April Term, 1822.

22d April—judgment for $12,000, damages and costs. Damages to be released on payment of $7,625, with interest from 1st February, 1820, till paid.

Costs, - - - - $13 10
Revived by sci. fa. to May, 1826.
Costs on sci. fa. - - 11 37
Add'l cost, - - - 3 64
Sci. fa. to December term, 1829.
Costs if off, - - - 8 23
Test:

W. BRENT, *Clerk.*

THE BANK OF THE UNITED STATES
vs.
GEORGE PETER. } April Term, 1824.

19th May—judgment for $20,000, damages and costs. Damages to be released on payment of $12,970, with interest from 21st May, 1822, till paid.

Cost, - - - $11 97
Test:

W. BRENT, *Clerk.*

THE BANK OF THE UNITED STATES
vs.
GEORGE PETER. } April Term, 1824.

19th May—judgment for $10,000, damages and costs. Damages

to be released on payment of $5,000, with interest from 21st May, 1822, till paid.

Cost, - - - $11 97

Test:

W. BRENT, *Clerk*.

THE FARMERS AND MECHANICS BANK of Georgetown, *vs.* GEORGE PETER. } April Term, 1824.

19th May—judgment for $7,000, damages and costs. Damages to be released on payment of $3,350 with interest, from 12th June, 1822, till paid.

Cost, - - - $13 02
Add'l cost, - - - 2 73

Test:

W. BRENT, *Clerk*.

ISAAC S. NICHOLLS use of Wm. Marbury, trustee *vs.* GEORGE PETER. } April Term, 1824.

19th May—judgment for $1000, damages and costs. Damages to be released on payment of $536 38, with interest from 24th November, 1823, till paid.

Costs, - - - $11 76
Additional Cost, - - 3 64

Test:

W. BRENT, *Clerk*.

DARIUS CLAGETT *vs.* GEORGE PETER. } May Term, 1825.

24th May—judgment for $2000, damages and costs. Damages to be released on payment of $1,117 71, with interest from 24th March, 1824, till paid.

Costs, - - - $13 02
Add'l credit, - - 1 84

December term, 1825, made on fi. fa. $779 11.

Test:

W. BRENT, *Clerk*.

UNION BANK OF GEORGETOWN *vs.* GEORGE PETER. } May Term, 1825.

24th May—judgment for $600, damages and costs. Damages to

be released on payment of $250, with interest from 17th October, 1831, till paid.

Cost, - - - 10 06
Add'l cost, - - 3 64
1825, July 11th, paid $80
" " 19th, " 40

Test:

W. BRENT, *Clerk.*

THE BANK OF THE UNITED STATES
vs.
GEORGE PETER. } December Term, 1825.

18th January—judgment for $40,000 damages and costs. Damages to be released on payment of $20,789, with interest from 12th November, 1822, till paid.

Costs, - - $11 90

Test:

W. BRENT, *Clerk.*

THE BANK OF THE UNITED STATES
vs.
GEORGE PETER. } December Term, 1825.

18th January—judgment for $3000, damages and costs. Damages to be released on payment of $1,360, with interest from 12th November, 1822, till paid.

Costs, - - - - $11 90

Test:

W. BRENT, *Clerk.*

THE BANK OF THE UNITED STATES,
vs.
GEORGE PETER. } December Term, 1825.

18th January—judgment for $3000, damages and costs. Damages to be released on payment of $1,360, with interest from 19th November, 1822, till paid.

Costs, - - - 11 90

Test:

W. BRENT, *Clerk.*

THE BANK OF COLUMBIA, use of the Bank of the U. States,
vs.
GEORGE PETER. } May Term, 1826.

6th June—Judgment for plaintiff, on verdict of a jury for $9,001 75, with interest from 25th April, 1822, till paid.

Costs, - - - - $32 03
Ad. co. - - - - 2 52

Test:

W. BRENT, *Clk.*

THE BANK OF COLUMBIA, use of the Bank of the United States
vs.
GEORGE PETER. } May Term, 1826.

2d June—Judgment for $30,000 damages and costs. Damages to be released on payment of $15,000, with interest from 5th February, 1824, till paid.

Costs, - - -	$12 71
Add'l costs, - - -	2 52

Test:

W. BRENT, *Clk.*

THE BANK OF THE UNITED STATES, use of the United States, and the Bank of the United States,
vs.
GEORGE PETER. } May Term, 1826.

6th June—Judgment for $6,000 damages and costs. Damages to be released on payment of $3,656 94, with interest from 15th April, 1824, till paid.

Costs, - - -	$11 66
Add'l cost, - - -	2 52

Test:

W. BRENT, *Clk.*

Exhibit D, called for in complainant's bill, page 7, is not on file with the papers.

Exhibit F, referred to in Complainant's Bill, page 9.

GEORGE PETER *to* THOMAS PETER. } Deed recorded 10th May, 1830.

This indenture, made this seventh day of May, in the year of our Lord one thousand eight hundred and thirty, between George Peter, of Montgomery county, in the State of Maryland, of the one part, and Thomas Peter, of Washington county, in the District of Columbia, of the other part:

Whereas, the said George Peter is indebted to the President, Directors, and Company of the Bank of the United States; to the President and Directors of the Union Bank of George-Town; and to the President and Directors of the Farmers' and Mechanics' Bank of George-Town, in divers large sums of money; for which the said George Peter gave his several promissory notes, payable to the said Thomas Peter, and by him endorsed, to the said Bank of the United States, the Union Bank of George-Town, and the said Farmers' and Mechanicks' Bank of George-Town: upon which said several promis-

sory notes, given as aforesaid, judgments have been rendered in favour of the said banks, against the said George Peter and Thomas Peter, in the circuit court of the District of Columbia for Washington county, and in Montgomery county court, in the State of Maryland:

And whereas the said George Peter is desirious of selling all his real estate in the District of Columbia, for the purpose of discharging and paying off the said judgments, as far as the same will avail for that purpose, and is also desirous of avoiding the expenses attending the sale of the same upon execution, thereby diminishing the fund out of which his creditors are to be paid:

Now, therefore, this indenture witnesseth, that in consideration of the premises, and in further consideration of the sum of five dollars, current money of the United States, to him, the said George Peter, in hand paid by the said Thomas Peter, the receipt whereof is hereby acknowledged, he, the said George Peter, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Thomas Peter, in trust, for the purposes hereinafter particularly set forth, and expressed, all the interest, right, claim, property, and estate, which he, the said George Peter, hath in and to the following described lots of ground, lying and being in the city of Washington, and distinguished on the ground plan of said city, as follows, viz: lot six, in square one; lot one, in square eleven; lot eleven, in square twelve; lot two, in square thirteen; lot nine, in square thirteen; lot five, in square twenty-two; lot in square west of square twenty-three; lot thirty-four, in square twenty-four; lot one, in square number twenty-six; lots number six and number seven, in square number thirty-one: to have and to hold the said lots of ground situate as aforesaid, and so as aforesaid described, and all the right, title, estate, and interest in possession, reversion, or remainder, of him, the said George Peter, therein and thereto, unto the said Thomas Peter, his heirs and assigns, forever, to and for the uses, trusts, and purposes following, and to and for no other use, intent, or purpose, that is to say, in trust, that the said Thomas Peter shall and may sell and dispose of all, or any part, of the said lots of ground, so as aforesaid described, at public or private sale, for cash or on credit, as he may judge most expedient, and the proceeds of the said sales to apply first to the payment of the expenses attending the execution of this trust, and secondly, to discharge all judgments which may have been obtained against the said George Peter, in the order in which said judgments have been obtained, and according to their legal priority; and to take and receive notes, bonds, mortgages, and other securities, in his name, (but to the uses before described,) for the securing the payment of the purchase money of the whole, or any part, of the lots aforesaid, from the purchaser or purchasers thereof; and on the receipt of the purchase money contracted to be paid for the whole, or any part, of the lots aforesaid, to execute and acknowledge, in due form of law, deeds of conveyance unto the purchaser or purchasers, his, her, or their heirs or assigns, in fee simple absolute.

And this indenture further witnesseth, that the said George Peter hath constituted and appointed, and by these presents doth constitute and appoint, Robert Dick, of George-Town, in the District of Columbia, his attorney, with full power to appear for him, and in his name, and, as his act and deed, to acknowledge this indenture before any court, judge, or justice, or any person or persons having lawful authority, by the laws of the District of Columbia, to take the said acknowledgment, in order that the said indenture may be recorded according to law.

In witness whereof, the said George Peter hath hereunto set his hand and seal, the day and year first above written.

GEORGE PETER. [SEAL.]

Signed, sealed, and delivered, in the presence of us,
JOHN P. C. PETER,
ROBERT P. DUNLAP.

DISTRICT OF COLUMBIA, *Washington County, ss.*

Be it remembered, that on this eighth day of May, in the year of our Lord, one thousand eight hundred and thirty, before the subscribers, two of the justices of the peace in and for the county and district aforesaid, personally appears Robert P. Dunlop, and saith, that he, the said Robert P. Dunlop, did, on the seventh day of May, in the year eighteen hundred and thirty, see the above-named George Peter, sign, seal, and, as his act and deed, deliver the foregoing deed of indenture, with the letter of attorney therein contained: and this deponent further saith, that the name George Peter, set and subscribed to the said deed, is the proper handwriting of the said George Peter; and the names of this deponent and John P. C. Peter, set and subscribed to the said deed, as witnesses of the due execution thereof, are of the respective proper handwriting of this deponent and of the said John P. C. Peter.

Sworn to before

ROBT. GETTY, *J. P.*
JAMES GETTY.

DISTRICT OF COLUMBIA, *Washington County, ss.*

On this eighth day of May, in the year of our Lord, one thousand eight hundred and thirty, before us the subscribers, two of the justices of the peace in and for the county and district aforesaid, personally appears Robert Dick, named in the power of attorney contained in the foregoing indenture, (the execution whereof hath been duly proved before us,) and by virtue of the said power of attorney contained in the said indenture, acknowledges the said indenture for and in the name of, and as the act and deed of the above and therein named George Peter, in order that the same may be recorded according to law.

And now, at the same time also, personally appears Sarah Peter,

wife of the said George Peter, before us, the subscribers, justices of the peace as aforesaid, and acknowledges the said deed or instrument of writing to be her act and deed; and the lands, and premises, and lots of ground therein mentioned, to be the right and estate of the within named Thomas Peter, his heirs and assigns, to and for the purposes therein expressed. And the said Sarah Peter, being by us privately examined apart, from and out of the presence and hearing of her husband, whether she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by her husband, or fear of his displeasure: acknowledges that she doth make her acknowledgment of the same, willingly and freely, and without being induced thereto by fear or threats of, or ill usage by her husband, or fear of his displeasure.

Taken and certified the day and year above written, being the 8th May, 1830.

ROBT. GETTY, *J. P.*
JAMES GETTY.

On the back of the foregoing deed was the following endorsement, to wit:

"Received, 10th May, 1830, to be recorded, and the same day was recorded, in Liber W. B., No. 30, folios 178, 179, 180, 181, and 182, one of the land records of the county of Washington, in the District of Columbia, and examined by

W. BRENT, *Cl'k.*

Exhibit G.

Exhibit G., referred to in complainant's bill, page 9.

GEORGE PETER *to* THOMAS PETER. } Deed recorded 6th Oct. 1829.

This indenture made, this first day of October, in the year of our Lord, one thousand eight hundred and twenty-nine, between George Peter, of Montgomery county, in the State of Maryland, of the one part, and Thomas Peter, of Washington county, in the District of Columbia, of the other part. Whereas the said George Peter is indebted to the president, directors, and company of the Bank of the United States; to the president and directors of the Union bank of Georgetown, and to the president and directors of the Farmers' and Mechanics' bank of Georgetown, in divers large sums of money, for which the said George Peter gave his several promissory notes, payable to the said Thomas Peter, and by him endorsed to the said Bank of the United States, the Union bank, and the said Farmers' and Mechanics' bank of Georgetown, upon which said several promissory notes, given as aforesaid, judgments have been rendered in favour of the said named banks, against the said George Peter and Thomas Peter, in the circuit court of the District of Columbia, for

Washington county, and in Montgomery county court, in the State of Maryland:

And whereas the said George Peter is desirous of selling all his real estate in the District of Columbia, for the purpose of discharging and paying off the said judgments, as far *as* the same will avail for that purpose; and also is desirous of avoiding the expenses attending the sale of the said property by the marshal of the District of Columbia, thereby diminishing the fund out of which his said creditors are to be paid.

Now, therefore, this indenture witnesseth, that, in consideration of the premises, and in further consideration of the sum of five dollars, current money of the United States, to him, the said George Peter, in hand paid, by the said Thomas Peter, the receipt whereof is hereby acknowledged, he, the said George Peter, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Thomas Peter, in trust, for the purposes hereinafter particularly set forth and expressed, all the interest, right, claim, property, and estates, which he, the said George Peter, hath, in and to the following described lots of ground, lying and being in the city of Washington, and distinguished on the plan of said city as follows, viz: Lot six, in square one; lot one, in square eleven; lot eleven, in square twelve; lot two, in square thirteen; lot nine, in square thirteen; lot five, in square twenty-two; lot three, in square west of square twenty-three; lot thirty-four, in square twenty-four; lot one, in square twenty-six; and lot seven, in square twenty-one. To have and to hold the said lots of ground, situate as aforesaid, and so as aforesaid described; and all the right, title, estate, and interest, in possession, reversion, or remainder, of him, the said George Peter, therein and thereto, unto the said Thomas Peter, his heirs and assigns, forever, to and for the uses, trusts, and purposes following, and to and for no other use, intent, or purpose, that is to say: in trust, that *that* the said Thomas Peter may sell and dispose of all or any part of the said lots of ground, so as aforesaid described, at public or private sale, for cash or on credit, as he may judge most expedient; and the proceeds of the said sales to apply first to the payment of the expenses attending the execution of this trust, and secondly, to discharge all judgements which may *have* been obtained against the said George Peter, in the order in which said judgments have been obtained, and according to their legal order and priority; and to take and receive bonds, notes, mortgages, or other securities in his name, (but to uses before declared,) for the securing the payment of the purchase money, of the whole or any part of the lots aforesaid, from the purchaser or purchasers thereof, and on the receipt of the purchase money, contracted to be paid for the whole or any part of the said lots of ground, to execute and acknowledge, in due form of law, deeds of conveyance unto the purchaser, his, her, or their heirs or assigns, in fee simple absolute.

And this indenture further witnesseth, that the said George Peter hath constituted and appointed, and by these presents doth constitute and appoint, Robert P. Dunlop, of George-Town, in the District

of Columbia, his attorney, with full power to appear for him and in his name, and as his act and deed, to acknowledge this indenture before any court, judge or justice, or any person or persons, having lawful authority by the laws of the District of Columbia, to take the said acknowledgment, in order that the said indenture may be recorded according to law.

In witness whereof, the said George Peter hath hereunto put his hand and seal, the day and year first above written.

GEORGE PETER. [SEAL.]

Signed, sealed, and delivered, in the presence of us,
JOHN P. C. PETER,
ROBERT DICK.

DISTRICT OF COLUMBIA, *Washington County, Sct.*

Be it remembered, that, on this day of in the year one thousand eight hundred and twenty-nine, before the subscribers, two of the justices of the peace in and for the county and district aforesaid, personally appears Robert Dick, and saith, that he, the said Robert Dick, did, on the first day of October, in the year eighteen hundred and twenty-nine, see the above named George Peter, sign, seal, and, as his act and deed, deliver the above deed, with the letter of attorney therein contained; and this deponent further saith, that the name George Peter, set and subscribed to the said deed, is the proper handwriting of the said George Peter; and the names of this deponent and John P. C. Peter, set and subscribed to the said deed as witness of the due execution thereof, are of the respective proper handwriting of this deponent, and of the said John P. C. Peter.

Sworn to before us,

JOHN COX,
THOMAS CORCORAN.

DISTRICT OF COLUMBIA, *Washington County, sct.*

On this third day of October, in the year one thousand eight hundred and twenty-nine, before us, the subscribers, two of the justices of the peace in and for the county and district aforesaid, personally appears Robert P. Dunlop, named in the power of attorney contained in the foregoing indenture, (the execution whereof hath been duly proved before us) and by virtue of the said power of attorney contained in the said indenture, acknowledges the said indenture for, and in the name of, and as the act and deed of, the above and therein named George Peter, in order that the same may be recorded according to law.

Acknowledged before

JOHN COX,
THOMAS CORCORAN.

On the back of the foregoing deed was the following endorsement, to wit:

"Received, 6th October, 1829, to be recorded, and the same day was recorded in Liber W. B., No. 27, folios 225, 226, 227, and 228, one of the lande record of Washington county, in the District of Columbia, and examined by

W. BRENT, *Cl'k.*

Defendants' Appearance and Answer.

On which said tenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, the said defendants, by Richard S. Coxe, Esquire, their attorney, come into court here; and the said defendants, by their solicitor aforesaid, filed in court here the following answer, to wit:

The joint and several answer of Richard Smith, and the President, Directors, and Company of the Bank of the United States, the Union Bank of Georgetown, Darius Clagett, and George M. Peter, and John P. C. Peter, executors of the last will and testament of Thomas Peter, deceased, complainants:

These defendants, now, and at all times hereafter, saveing and reserving to themselves all and all manner of advantage and benefit of exceptions that may be made or taken to the many errors, uncertainties, imperfections, and defects, in the said bill of complaint contained, nevertheless, for answer thereto, or to so much thereof as they are advised that it is material or proper for them to make answer unto, they answer and say—

That they admit it to be true, that George Peter, named in said bill of complaint, was, in the year 1824, largely indebted to various persons, and as they have heard, and believe, among others, to the persons named in said bill of complaint; but these defendants must require prooff of the existence, character, and amount, of said several debts, so averred by said complainants to be due to them, respectively, if it be deemed at all material, in the further prosecution of this suit, if there be any other debts so claimed, over and above those specifically named and set forth in the said deeds of trust, mentioned in said bill of complaint. And these defendants further admit, that the said George did, on or about the ninth day of April, 1824, make and execute his deed of indenture, to his brother, the said Thomas Peter, and Robert P. Dunlop, conveying to them, in fee simple, the real estate therein described, for the purposes, objects, and trust in the said deed mentioned, as by reference to the same, annexed to said bill of complaint, will appear. But these defendants know of no other purpose, object, or design, in the making and executing said deed, than such as the instrument itself exhibits; and it is further admitted, that the said Robert P. Dunlop did, as in said bill is mentioned, release to said Thomas Peter all his right and title to said trust property.

And these defendants further admit, that sundry judgments were obtained and rendered in this honorable court against said George Peter; but they cannot say that the exhibit C, filed with said bill of complaint, contains an accurate and full statement of all the said judgments, so far as the same may be necessary to be known, for the proper determination of the present matter in controversy, though it probably does.

And it is further admitted, that in the year 1829, the said Thomas Peter did constitute this defendant, Richard Smith, cashier of the office of discount and deposite of the Bank of the United States, the other defendant, and the agent of said bank in this and other of its concerns, his agent and attorney, to conduct the sale of said trust property, and to distribute the proceeds among the parties entitled thereto; and that under and by virtue of the said authority, so delegated, the said Richard did sell the said property, so included in said trust deed, as aforesaid, on the 17th and 18th September, 1829; and that the net proceeds of said sales, deducting only the auctioneer's charges, amounted to the sum of $37,285 90, an amount insufficient to discharge all the debts for which said property was bound.

It is also admitted to be true, that prior to the executing of said deed of April 9, 1824, to wit, on or about the 22d April, 1822, the said Union Bank of Georgetown did obtain, in your honorable court, two judgments against said George Peter, one of which, however, these defendants believe and aver to have been obtained upon a debt of said G. Peter alone, and the other upon a note on which other parties were bound; but whether he was bound as security for his brother, Daniel Peter, or any other person, thereon, will best appear by reference to the record in said case, if the inquiry be at all material. It is, however, admitted, that said judgments were not among those specifically provided for in said deed of trust, but that they did constitute a lien upon all the property of said George Peter in Washington county, D. C., which by law was bound for the same.

These defendants know nothing of any threats by said Union Bank in regard to the enforcement of said judgments, by issuing and levying executions upon said trust property; but they admit that the parties interested in said deed of trust were apprised of the existence of said judgments, and that they had a priority of lien over said trust deed, or on the real estate included in said deed; and that in order to induce purchasers to purchase said property at said sales, in September, 1829, by assuring them of a good and secure title, it was agreed by and between all the parties interested or concerned in said deed of April 9, 1824, that the said judgments of said Union Bank should be first paid out of the proceeds of said sales of said trust property, and that agreement and arrangement was made and concluded sometime, it is believed, prior to the sales in September, 1829.

And this defendant, Richard Smith, further says, that when the proceeds of said sales did come to his hands, to wit, on or about the 6th day of January, 1830, he did, in pursuance and execution of said agreement and consent of the said parties interested and concerned in said deed of trust, pay the amount of said judgments, being

$9,097 56, including debt, interest, and cost, to the said Union Bank: and that afterwards, and he believes simply because in all the said business he acted entirely as the agent of the Bank of the U. States, who had engaged to superintend the whole concern, until a final settlement, and thereby represented all the parties in interest, the said judgments, instead of being entered satisfied, which probably would have been the proper cause, were entered to the use of the Bank of the *Bank of the* United States; and these defendants are willing to do in relation thereto what your honors shall deem right to the purchasers at said sale, who, from the assurance that the lien of said judgments should be removed, have an interest in having the same extinguished.

And further answering, these defendants say, that it being discovered that the said deed of April 9, 1824, did not comprehend all the property of said George Peter in the said county of Washington, on or about the first day of October, 1829, he, the said George Peter, executed to the said Thomas Peter another deed of trust, for the purposes therein mentioned, including nine several lots of ground in the city of Washington; and it being subsequently ascertained that there were two more lots in the same predicament, he, the said George, subsequently executed another deed, on the 7th May, 1830, for the whole eleven lots, those included in the deed of October being again inserted, as these defendants believe, because that deed was not so executed as to pass the contingent right of dower in Mrs. Peter.—And under these two last mentioned deeds, the said Thomas Peter did sell the said eleven lots for the sum of $5,228 $\frac{10}{100}$, or thereabouts; which amount, or the greater part thereof, has been received by the said Richard Smith, and has been ever since held by him, to be distributed according to the relative rights of the parties interested.

And these defendants deny that the said Thomas Peter in his life-time, gave any directions to the said Richard Smith on this subject, further than by concurring in all and every the acts and doings hereinbefore mentioned; but on the contrary, the said Richard avers that he did repeatedly apply to him for instruction and advice in the matter, but never was able to induce him to give any attention to the subject. Nor during the life-time of the said Thomas Peter, was any difficulty ever raised, so far as these defendants know, in reference to the distribution of said proceeds, nor any such claim set up as is now advanced on the part of the said complainants.

And these defendants further say, that the said judgment, which the Bank of the United States holds against the said George Peter, for the sum of $5,000, and which said complainants aver was obtained against him, as the endorser of one John Peter, was not so obtained, but was obtained against him upon a note of which he himself was the drawer; and they say that said judgment was obtained on the 17th May, 1824, a very short time subsequent to the deed of 9th April, 1824, and long anterior to the deeds of October, 1829, and May, 1830, conveying the said eleven additional lots, and consequently has priority of lien over said trust deeds.

And they further insist, that inasmuch as the said judgments of

the Union Bank were in fact and in equity extinguished by their full payment, in January, 1830, and only nominally kept alive, for the specific purposes of the protection of these defendants, they cannot be made available to oust the Bank of the United States of its only fund, and that wholly an inadequate one, for the payment of said judgment of $5,000, so obtained, as aforesaid—more particularly cannot this be done at the instance and for the benefit of the said Thomas Peter, or his representatives, who fully concurred and participated in the acts and doings above mentioned.

And these defendants further say, that they are informed, and believe, and therefore aver, that the said Farmers' and Mechanics' Bank have no interest whatever in the present subject of controversy, its debt being entirely paid, or fully secured.

And further they say, that the sum of $2,428 $\frac{62}{100}$, part of the proceeds of said eleven lots, is precisely or about the proportion and dividend belonging to, and applicable out of the same, to the debt due to the Bank of the United States, if the said judgments of the Union Bank, so paid as aforesaid, and in equity extinguished, be not held by your honors to be still alive and outstanding, notwithstanding said agreement and consent, and application of the proceeds of said first sales, so as to operate as a lien upon the proceeds of the sale of the said eleven lots. And these defendants deny that by the appropriation of the proceeds of said sales, in the manner they have done, would be to work injustice to any one; but on the other hand, they claim and insist, that the appropriation now asked by complainants would deprive this defendant, the Bank of the United States, of its only means of payment, to the extent of said dividend, of a just debt.

And these defendants admit the death of said Thomas Peter, as alleged, and the will and the appointment of his executors, as charged, and they pray to be hence dismissed, with their reasonable costs and charges, in this behalf most unjustly sustained.

RICH'D S. COXE, *for def'ts.*

DISTRICT OF COLUMBIA—*Washington County, ss.*

On this tenth day of July, 1837, personally appeared before the subscriber, a justice of the peace in and for said county of Washington, Richard Smith, the above named defendant, who, being duly sworn, according to law, deposes and says, that the averments and allegations in the aforegoing answer are true as stated, to the best of his knowledge and belief.

RICH'D SMITH, *Cash'r.*

Sworn before SA. H. SMITH, *J. P.*

Rule Replication.

Thereupon, on motion of the said defendants, by their solicitors aforesaid, it was ordered by the court here, that the said complain-

ants enter a replication to the answer aforesaid, or in default thereof, that the said bill be dismissed. Thereupon, the complainants, by their solicitors aforesaid, filed in court here the following replication, to wit:

Gen'l Replication.

The replication of George W. Peter, *a* others, complainants, to the answer of Richard Smith, and the President, Directors and Company of the Bank of the United States, defendants:

The complainants, saveing and reserving to themselves all and all manner of exceptions, &c., for replication to the answer of said defendants, say, that they do and will aver, maintain, and prove their said bill to be true and sufficient in the law, to be answered unto by the said defendants; and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliant, without that, &c. &c.

W. REDIN, and } *Sol'rs for Comp'ts.*
JAS. DUNLAP, }

Agreement to take Depo's.

It is agreed that either party may take testimony before any justice of the peace, on five days notice to the adverse party, or their solicitors, and the cause to be set for hearing at the next November term.

JAS. DUNLOP, } *For Comp'ts.*
WM. REDIN, }
RICHD. L. COXE, *Def't.*

JULY 13th, 1837.

The following depositions were filed in the cause, under the above agreement:

DEPOSITION OF ROBT. P. DUNLOP.

Dep. of R. P. Dunlop.

1. Were you the attorney of Thomas Peter, from September, 1829, till the time of his death, and familier with his business, and advised with him, relating to his transactions whith the Bank of the United States?

Answer. I was the attorney of Mr. Thomas Peter, from the year 1824, to the time of his death, and had during all that time, frequent and familiar conversations with him, relating to his law business.

2. When did you first hear that the Bank of the United States claimed a dividend of the proceeds of the lots, for the $5000 debt, referred to in the bill and answer?

Answer. I first heard from B. L. Lear, Esquire, the attorney of the Bank of the United States, that that bank claimed a dividend of the proceeds of the 11 lots, for the $5000 debt referred to in the bill and answer; the time I do not recollect. I was much surprised to hear of the claim; it was mentioned to me in the court room, by Mr. Lear. I understood from him, that he had been making an examination of the records of the court, with reference to the debts of the Messrs. T. & G. Peter, at the instance of the bank, and he seemed to me to claim some merit to himself for having found out the claims, which he then asserted on behalf of the Bank of the U. States; the conversation with Mr. Lear was some time previous to the year 1832.

3. Did Thomas Peter ever concur in or consent to such application of said proceeds? On the contrary, did he not always resist it as unjust, and employ you to resist it? Have not the representatives of Thomas also, always resisted it?

Answer. Mr. Thomas Peter in his life time always resisted the claim set up by the Bank of the United States. I was employed by him to oppose it, and by his representatives after his death. I believe that I first mentioned the claim to Mr. Jno. T. Peter; it was soon after my conversation with Mr. Lear; he was much surprised at the claim.

4. In your conversations and conferences with the officers of the bank, did they ever rest their claim to such dividend, on any concurrence or assent of the said Thomas Peter, or his executors?

Answer. I never had to my knowledge any conversation with the officers of the Bank of the United States, respecting their claim.

5. Did not Thomas Peter always insist that the Union Bank's judgment, paid out of the proceeds of the trust deed of April, 1824, should be entered for his use, and was not the entry of the same, to the use of the Bank of the United States, against Thomas Peter's consent?

Answer. Mr. Thomas Peter after he understood that the jugdments of the Union Bank of George-Town, had been entered for the use of the U. States Bank, was dissatisfied with said entry; and always as for as my knowledge extends, contended that he was entitled to the benefit of said judgments, and that the same should of right be entered for his use.

6. Please state whether the Bank of the United States, or their officers agreed with you, and if so, when, to refer their claim to a dividend of the lots of, to Rd. Coxe, James Dunlop, and Clement Cox, and all that took place in relation to the reference, and the decision of the referers, if any.

Answer. It was agreed verbally between Mr. Peter and the Bank of the United States, to refer the matter in dispute between them, respecting the claim of the United States Bank, to a dividend on the 11 lots, on account of their judgment, against George Peter as the endorser of John Peter, to R. S. Coxe, J. Dunlop, and C. Cox, Esqrs. I think that the consent on the part of the Bank of the United States, was given by Richd. Smith, Esqr., cashier of the bank in

Washington. I recollect that I met the referers, as the atty. of Tho. Peter, at the room of the cashier, twice on this business. I understood that J. Dunlop and Cox, two of the referers, agreed in opinion, that the said claim, on the part of the United States Bank, was unfounded. I understood that R. L. Coxe dissented from this opinion.

Thr defendants excepting to the legality and competency of the aforesaid testimony, and each question and answer, nevertheless, reserving fully said objection, cross examines the witness.

1. In answer to the 6th question, in chief, you state that a verbal agreement was made, between Mr. Peter and the Bank of the United States, to refer the matter therein mentioned to R. S. Coxe, James Dunlop and C, Coxe. Esqrs., and that you met the referers afterwards, twice on this business. Be good enough to state whether you were personally cognizant of such agreement to refer; or how do you know it, and whether all the said referers were present at any one meeting, or how was that.

Answer. I was not present when such agreement was made. Whatever agreement was made, was made with Mr. Thomas Peter, and I derived my information, at least principally, from him, as I had no conversation with any officer of the bank on the subject of it.

The first meeting J. Dunlop and C. Cox were present, and R. S. Coxe absent; nor do I recollect ever being present, at any meeting when Mr. R. S. Cox was present.

2. What after proceedings were had in the business?

After I learned that Mr. J. Dunlop and Mr. C. Cox had formed their opinions, I learned from Mr. Peter, that the bank denied that Mr. Richard Smith had authority to make such agreement, and refused to abide by such opinion. It was then understood between Mr. R. S. Cox and myself, that an amicable reference should be made to the circuit court, the papers were prepared, which are hereto annexed, marked . And the court decided against the claim of Mr. Peter, as will appear by the papers referred to.

DISTRICT OF COLUMBIA—*Washington County.*

On this 21st Nov., 1837, personally appeared Robert P. Dunlop before me, the subscriber, a justice of the peace, in and for the county and district aforesaid, and made oath that the matters set forth in the foregoing answers, to the foregoing interrogatories, and cross interrogatories, are true to the best of his knowledge and belief.

JOEL BROWN.

John Peter's letter, with the following endorsement on the back, "agreed to read," to wit:

18 *November*, 1837.

JAMES DUNLOP, Esqr:

Dear Sir—In answer to your enquiry, I say that the debt of $5000,

in the Branch Bank, Washington, in the name of George Peters, was for my accommodation.

I should have attended and given my deposition yesterday, had I your notice in time.

Very respectfully, yours, &c.

JNO. PETER.

DAVID ENGLISH'S DEPOSITION.

Depo. of D. English.

Deposition of David English, taken at the mayor's office, George Town, 17th Nov., 1837, between 11 and 12 o'clock, before John Cox, justice of the peace, on the notice hereto annexed.

Questions by Compl's.

1st. Were, and are you acquainted with the late David Peter, and his brother George Peter?

Ans. I was acquainted with both the gentlemen.

2d. Were, or were not two judgments obtained by the Union Bank, in or about the year 1822, against George Peter? If yea, were said judgments and each of them rendered upon loans, made by said bank, to David Peter, for his sole accommodation, and did the said David Peter, give George Peter as security for the same!

Ans. I believe there were two judgments obtained, as stated, and on 2 notes of Sarah Peter, with Geo. Peter and L. H. Johns, as security, which notes, one for 309 dolls., and the other $7625, both fell due Jan'y 29th, 1820, and which notes were a continuation of a loan to David Peter in his life time.

3. Question. When, and by whom, and out of what funds were the said judgments paid, and the amount paid thereon: and upon receipt of payment, to whose use were the said judgments entered?

Ans. The am't of said judgments, rendered on said notes, were paid by R. Smith, cash'r, and as I understood out of the proceeds of the sale of G. Peter's property. The payment was made in Jan'y, 1830; am't 9097^{56} dolls., and I am informed the judgments were entered for the use of the Bank of the United States, which will I presume appear on the docket of the court.

4. Question. Did the Union Bank ever authorize Richard Smith, or consent in any way to his applying the proceeds of 11 lots in Washington, referred to in the bill and answer, in this cause, to the payment of the $5000 judgment referred to in said bill and answer, or any part thereof, or to the said Smith retaining for the same?

Ans. I have no knowledge that the bank ever gave any such authority or consent; nor that they were ever asked to give it. I am confident if they had been asked, they would have refused.

DAVID ENGLISH.

Sworn to, before me this 17th day of November, 1837.

JOHN COX.

Question by Compl't.

Is any debt now due, by George Peter, on his own notes to the Union Bank, secured by the deed of April, 1824, referred to in the bill and answer?

Ans. There is a large sum due on a note of George Peter, secured in said deed, exceeding ten thosuand dollars.

DAVID ENGLISH.

Swon to before me, this 17th day of November, 1837.

JOHN COX.

DEPOSITION OF RICHARD SMITH.

Depo. of Rd. Smith.

GEORGE W. PETER, and others
vs.
RICHARD SMITH and BK. U. STATES. } In Equity.

Deposition of Rich'd Smith taken at the office of the Bank of the U. States, in Washington, before Samuel H. Smith, Esq., a justice of the peace, at one o'clock P. M., under the notice hereto annexed, as in the above case.

Question by Complainant.

1. Have you or not as the attorney of Thomas Peter, recognized the existence of the debts of complainants, set forth in the deed of trust, of the 9th April, 1824, and as such attorney in fact, made payments to the creditors thereon?

Answer. My impression is that the several debts were specifically named in the deed of trust from G. Peter, and I have made payments on account thereof, from the proceeds of the property, as received. A large sum is, I believe, still due the Union Bank.

2d Question by Complainant.

Do you or do you not know that the $5,000 debt for which judgment was rendered against George Peter, as stated in your answer, was a debt contracted with the Bank of the United States for the sole accommodation of John Peter; and that George Peter was the mere security. Do you not know that the note, though drawn by George Peter, was a borrowed note; borrowed by Jno. Peter from George Peter, and discounted for the use and accommodation of John Peter. Have you not heard both John and George Peter so declare the fact to be, and do not the books of the bank confirm it. Did or did not George Peter voluntarily and without being asked to do so, give to the Bank of the United States security for such debt, on a tract of

land in Clarksburgh, called "Garnkirk." Did not the deed conveying said land, state said debt to be the debt of John Peter, and George Peter to be the security?

Answer. I do not know the fact that the note for $5,000 was discounted solely for the use of Jno. Peter, and a borrowed note; but I am under the impression, and believe that such was the case. I do not recollect to have heard either John Peter or George Peter say so; but I have a faint impression on my mind, that when John Peter's ware-house was burnt, he gave the note of George Peter to the bank; either to obtain a new loan, or to secure an old one. I do not know under what circumstances George Peter gave the deed on Garnkirk. Reference to the deed itself will shew whether he referred to the note for $5,000 as one of John Peter's, or as one of his own. Certified deed may be so adduced as evidence in the case.

3d Question by Complainant.

How much did said tract of land contain in acres, and how much did it sell for under the decree of Montgomery county court; and how much has the bank since realized from the sales thereof; and how much still remains unsold? State fully your knowledge on this subject. State the balance due on said note after applying the proceeds of Garnkink.

Answer. The said tract contained, by the survey of Mr. James, 1194 acres, and sold at public sale for $4,499 50, from which the expenses allowed by the court, $375, were deducted, leaving $4,124 50, applicable to the debts for which it was pledged, viz., $2,440 81 to the note for $9,000 in the Bank of Columbia; and $1,683 79 in this office of Bank U. States, Washington. The bank has sold 641 acres for $3,584 60, leaving unsold 553 acres, for which we are offered one dollar per acre, making the aggregate sum of $4,141 60, and being $357 90 less than the amount at which it was taken. The balance due on George Peter's note for $5,000, is the whole amount of the note and costs, and also interest from the day it was due, viz., 21 May, 1822, deducting therefrom the proportion of proceeds, viz., $1,683 79, which was insufficient, on the 25th September, 1829, the day of sale, to pay the interest then due.

A reference to the books of the office enables me to answer the 3d question more definitively.

It appears that, on the 25th April, 1820, George Peter's note for $6,000 was first discounted, with J. Peter's endorsement; and the proceeds, according to the custom of the office, went to credit of John Peter. Previous to that a note of John Peter for $5,000, endorsed by Geo. Peter, had been discounted, but was paid on the day the note of Geo. Peter for $6,000 was discounted. This note for $6,000 was continued, by renewals, until it fell due the 5-8 May, 1821, and was suffered to lie over until the 22d September of same year. On the 18th of that month, a new note of George Peter for $5,000, endorsed by Charles A. Beatty & Jno. Peter, was discounted to credit of Charles A. Beatty, and the proceeds transferred by him to credit of

Geo. Peter, which, with $1,165 89, also placed to his credit by J. Peter, arranged the note for $6,000.

In the manner which I made to the bill of the complainants, I did not intend to convey the meaning that Mr. Tho's Peter ever agreed to make such a distribution of the proceeds of the 11 lots, as the bank claims. In contending for its distributive share of the proceeds of these lots the bank placed its claims on its legal rights, without reference to any understanding or consent of the several parties interested therein.

Cross Interrogatory.

What do you know of a reference after dispute between the Bank of the United States and T. Peter, to R. L. Coxe, J. Dunlop, and C. Coxe. Did such referees ever meet on the subject, and what was done?

Answer. I was very anxious to distribute the funds as they came into my hands, and as agent of Mr. Tho's Peter, who was trustee of Mr. Geo. Peter, I expressed a willingness that *that* the question should be referred to the counsel of the Bank of the United States, of the Union Bank, and of the F. & M. Bank, Georgetown; a meeting for this purpose was called, but was attended by the counsel representing the two latter banks only; as well as I recollect, these gentlemen expressed opinions adverse to the claim of the United States Bank; subsequent to this, but before another meeting took place, Mr. S. H. Smith, the President of the office of the Bank U. States, who had charge of the law business of the office, declined referring the claim of the Bank of the United States, and it was then agreed, that a case should be agreed on by the counsel of the contending parties, and submitted to the court for its decision.

RD. SMITH.

Sworn to this 21st November, 1836.

Before me,

SA. H. SMITH, *J. P.*

Deposition of Rich'd S. Coxe.

Richard S. Coxe being examined, deposes, and says:

Interrogatory 1.

Whate do you know of a reference being made of a dispute between the Bank of the U. S. and T. Peter, to yourself, J. Dunlop, and C. Coxe, and what was done under or in consequence of such reference.

Answer. My recollection is not very distinct, as it never assumed, according to my understanding, a specific or definite shape. I learned, whether from the counsel of the parties in some of my conversations with them, or from any officer of the bank, I am unable to say, that a difference of opinion existed between the bank and Mr. Peter,

on which the opinions of th counsel of the parties were to be taken, and that a consultation was desired. I was invited to attend one at the banking-house. The evening was a stormy one, I think, and that, or some other accidental cause, prevented me from attending. I afterwards learned that another meeting was to be had, and attended. In the interim I heard that the other two gentleman had formed their opinion and expressed it. We had had no conversation about it. On attending at the time designated, found Mr. J. Dunlop, with whom I had a full conversation; we differed in opinion; Mr. C. Coxe was not present, nor do I ever recollect conversing with him on the subject. In consequence of this diversity of opinion it was agreed between *between* Mr. R. Dunlop, att'y for Mr. Peter, and myself, as the att'y of the bank, that tne whole case should be submitted to the circuit court. Mr. D. there prepared a paper, I thought the court would not take it up in an informal manner, & suggested that it should be put in the form of a bill in ch'ry; this was done. The dates were filled up, and some alterations made by Mr. R'd Smith, and the paper filed, to which I orrally demurred. The court, without argument, decided in favor of the bank. Mr. Dunlop thinking it had been done without due consideration, submitted, at a subsequent day, his views on the subject, with some authorities; this was submitted to the court, and they again affirmed their former opinion. These three papers are all in the hand writing of Mr. Dunlop, & filed.

RICH'D S. COXE.

Sworn to before me this 21st November, 1837.

SA. H. SMITH, *J. P.*

Cause set for Hearing.

Whereupon, with the consent of the parties aforesaid, by their solicitors aforesaid, and by order of the court here thereon, tne said cause is set for hearing on the bill, answer, exhibits, general replication, and depositions; and the said cause was regularly continued at rules until the first Monday of May, eighteen hundred and thirty-eight.

At which said first Monday in May, in the year of our Lord eighteen hundred and thirty-eight, come into the circuit here, as well the said complainants, by their solicitors aforesaid, as the said defendants, by their solicitor: Whereupon, the said parties, by their solicitors aforesaid, filed in court here, the following agreement, to wit:

Agreement of Parties.

It having been agreed by Richard Smith, and the Bank of the United States, in the suit in chancery of George W. Peter et al, against them, to consider the whole proceeds of the eleven lots referred to in that suit, as actually received by Richard Smith, and also, to consider the sum of $2,428 62, part of said proceeds, claimed by the Bank of the United States, as actually paid to said

Bank of United States, it is now understood, and agreed, by the said Geo. W. Peter, for himself, & the other complainants in said suit, that the aforegoing admissions of Richard Smith, and the Bank of the United States, shall not prejudice them, as to so many of said eleven lots, as were bought by Mr. Thornton, alleged by said Smith and said bank to be still unpaid for by said Thornton, the said Peter agreeing with said Smith & said bank, that the difference between them in relation to said Thornton's said purchase, if not amicably settled, shall either be arbitrated, or submitted to the courts for their decision in a regular suit.

JAS. DUNLAP &
WM. REDIN,
Counsel for Compl't.

May 1, 1838.

GEO. W. PETER et al.
vs.
RD. SMITH & BK. U. STATES. } In Equity.

It is agreed in the above cause that the whole proceeds of the eleven lots referred to in the above suit, amounting to the sum of $5,228 70, has been received by Richard Smith, the agent of T. Peter, and that the sum of $2,428 62, was paid over by Richard Smith to the Bank of the United States, on the 17th October, 1829, as the dividend claimed by the bank on the judgment of the 17th May, 1824, and that the decree may go against the Bank of the United States alone, not prejudicing their right or appeal to the Supreme Court of the United States, to claim said sum as their dividend on said judgment.

RCH'D S. COXE.
Att'y for Defts.

May 1, 1838.

Whereupon, the court made the following decree in the premises:

Decree.

GEORGE W. PETER and others
vs.
RICHARD SMITH, and the President, Directors, and Company of the Bank of the United States. } In Equity—Decree.

This cause having been set for hearing on the bill, answers, exhibits, depositions, evidence, and general replication, and having been agreed by counsel, and considered by the court:

It is now, this 5th day of May, A. D. 1838, by the authority of this court, ordered, adjudged, and decreed, that the proceeds of the sales of the eleven lots, in the bill, answer, exhibits, and depositions in this cause referred to, amounting to the sum of $5,228 70, with

the interest accrued thereon, are applicable to, and of right ought to be applied, to reimburse (so far as they will go) the trust fund created by the deed of the 9th April, 1824, the sum of $9,097 56, taken out of that fund on the 6th January, A. D. 1830.

It is further ordered, adjudged, and decreed in this cause, that the defendants, the President, Directors, and Company of the Bank of the United States, do pay, forthwith, unto the complainant, Geo. W. Peter, who is hereby appointed trustee to receive the same, (for the use of the trust creditors named in the deed of the 9th April, 1824, pursuant to the terms of said trust deed, whose claims remain still unpaid,) the sum of two thousand four hundred and twenty-eight dollars sixty-two cents, with interest thereon from the 17th day of October, A. D. 1829, till paid, being the sum wrongfully retained out of the proceeds of sales of said eleven lots by the defendants, for the use of the said Bank of the United States, on their judgment in this cause set forth, of the 17th May, 1824.

It is further ordered and decreed in this cause, that the defendants do pay to the complainants the costs of this suit.

By order of the court.

Test: W. BRENT, *Clk.*

Appeal prayed to S. Court U. States.

And thereupon, the said President, Directors, and Company of the Bank of the United States, by their solicitor aforesaid, prayed an appeal from the judgment and decree aforesaid, made by the court in the premises, to the Supreme Court of the United States; and to them it is granted. Whereupon, they file in court here the following appeal bond, to wit:

Appeal Bond.

Know all men by these presents, that we, the President, Directors, and Company of the Bank of the United States, and Richard Smith, of the city of Washington, are, jointly and severally, held and firmly bound unto George W. Peters, in the full and just sum of five thousand dollars, lawful money, to be paid to the said George W. Peters, his certain attorney, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, and on the part of the said the President, Directors, and Company, their successors and assigns, and on the part of the said Richard Smith, his and each of his heirs, executors and administrators, jointly and severally, firmly by these presents; seal by the said the President, Directors, and Company of the Bank of the United States, by its corporate seal, and signature of Nicholas Biddle, Esquire, at Philadelphia, the 22d day of May, A. D. 1838, and by the said Richard Smith, at the city of Washington, the twenty-fifth day of May, A. D. 1838.

Whereas, lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein

the said George W. Peter and others were complainants, and the said the President, Directors, and Company of the Bank of the United States were defendants, a decree was rendered against the said defendants; and they having entered an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said the President, Directors, and Company of the Bank of the United States shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; otherwise, to be and remain in full force and virtue in law.

(Signed) THE PRESIDENT, DIRECTORS, and COMPANY OF THE BANK of the UNITED STATES,
By NICHOLAS BIDDLE, *President.* [SEAL.]
R'D SMITH, [SEAL.]

Signed, sealed, and delivered in the presence of us:
HERMAN CAPE,
ROBERT M. WALSH.

And by Richard Smith, in the presence of
SAMUEL H. SMITH.

Approved: W. CRANCH.

Clerk's Certificate.

And the same being approved of, it is ordered, that a record of the proceedings aforesaid, with all things thereunto relating, with the citation, be transmitted to the said Supreme Court of the United States; which is done accordingly.

In testimony whereof, I have hereunto subscribed my name,
[SEAL.] and affixed the seal of the said court, this 24th day of October, A. D. 1838.

W. BRENT, *Clk.*

ADDITIONAL.

Circuit Court of the District of Columbia for the county of Washington.

THE UNION BANK of Georgetown, use of the BANK OF THE UNITED STATES per order, filed 23d September, 1835.
agt.
GEORGE PETER. } April Term, 1822.

22d April—judgment for $600 damages and costs—damages to be released on payment of $309, with interest from 1st February, 1820, till paid.
Costs $13 10.
Test: WM. BRENT, *Cl'k.*

Fieri facias issued on the above judg't, and was renewed to May term, 1828, and returned on the 23d September, 1835, by the plaintiff, with the following assignment written thereon:

UNION BANK OF GEO'TOWN, Jan. 6th, 1830.

For value rec'd, I assign the within judgment and execution to the President, Directors, and Company of the Bank of the United States.

ROBERT BEVERLY,
President of the Union Bank of Geo'town.

True copy.
Test: WM. BRENT, *Cl'k.*

Circuit Court of the District of Columbia for the county of Washington.

THE UNION BANK of Georgetown use of the BANK OF THE UNITED STATES, per order filed.
agt.
GEORGE PETER. } April Term, 1822.

22d April—judgment for $12,000 damages and costs—damages to be released on payment of $7,625, with interest from 1st February, 1820, till paid.
Costs $13 10.
Test: WM. BRENT, *Cl'k.*

Fieri facias issued on the above, and one of them returned by the plaintiff on the 23d day of September, 1835, was the following assignment, to wit:

UNION BANK OF GEORGETOWN, Jan. 6th, 1830.

For value received, I assign the within judgment and execution, to the President, Directors, and Company of the Bank of the United States.

ROBERT BEVERLY,
President of the Union Bank of Geo'town.

True copies.
Test: WM. BRENT, *Cl'k.*

CIRCUIT COURT, Washington county.

UNION BANK of Georgetown use of the BANK OF THE UNITED STATES *agt.* GEORGE PETER. } March Term, 1838.

No. 10. Trials, scifa miltiel record and payment, general replication and issue.
The scifa issued 18th August, 1829.
Test: WM. BRENT, *Cl'k.*

CIRCUIT COURT, Washington county.

UNION BANK of Georgetown use the BANK OF THE UNITED STATES *vs.* GEORGE PETER. } March Term, 1838.

No. 11. Trials, scifa miltiel, record and pay't, gen'l rep. and issue.
The scifa issued 18th August, 1829.
Test: WM. BRENT, *Cl'k.*

GEORGE W. PETER, and others, *vs.* RICHARD SMITH and THE BANK OF THE U. STATES.

Papers omitted in the original record, and supposed to be those referred to in the depositions of Richard S. Coxe, and Robert P. Dunlop, Esqs.

GEO. W. PETER, and FAR'S AND MECH'S BANK, and others, *agt.* RICHARD SMITH and BANK OF THE U. STATES. } Statement of Facts.

George Peter, by his deed marked A, herewith exhibited, dated the 9th April, in the year 1824, conveyed in trust to his brother Thomas Peter, and to Robert P. Dunlop, certain real property, situate in Washington county, in the District of Columbia, particularly described in said deed, for the payment of his creditors, who are named in said deed. Robert P. Dunlop, on the day of , in the year , with the assent of the trust creditors, and before any act done by him in acceptance of the said trust, released to the said Thomas Peter, all the title vested in him to the said property, as will appear by the deed marked B, herewith exhibited. It is agreed that the paper marked C, herewith exhibited, contains a statement of the judgments rendered against the said George Peter, by the circuit Court of the District of Columbia, for the county of Washington, shewing the amount of said judgment; the times when, and the persons and bodies corporate in whose favour the said judgments were rendered by said court, so far as the same have any concern with, or are effected by the present matter in controversy.

During the year 1829, the trust creditors interested in said deed marked A, being desirous to sell the property therein conveyed, resolved to have the same sold, but before the sale, requested the said Thomas Peter to constitute Richard Smith, cashier of the Branch Bank of the United States, in the city of Washington, his agent and attorney to conduct the sale of the said property, and to receive the purchase money of the same, for the benefit of those concerned.

To this request, T. Peter acceded, and executed, in compliance therewith, the paper herewith exhibited, marked D. The sale of the trust property conveyed by the deed A, was made on the 17th and 18th Sept'r, 1829, and produced the sum of

Before the sale commenced, the trustee and his agent, with the approbation, and by the direction of the trust creditors, gave notice to the persons attending the sale, to purchase the said trust property, that the purchasers thereof would get a title free of any incumbrance or lien on the same from outstanding judgments, and that the judgments of the Union Bank of Geo'town against the said George Peter, which were rendered before the execution of the deed marked A, and therefore bound all the property conveyed by the said deed, would be paid off and satisfied out of the monies arising from the sales of the said property.

Accordingly, soon after the sale, Richard Smith, acting as attorney in fact of Thomas Peter, trustee, in virtue of the paper marked D, paid to the Union Bank of Georgetown, out of the monies received by him from the sales of the trust property, conveyed by the deed marked A, the amount of the judgments in favour of said

Union Bank against George Peter, and took a receipt therefor, which is herewith exhibited, marked E. After the sale was made in September, 1829, it was discovered that there were several lots in the city of Washington, the property of George Peter, which had not been conveyed by his deed marked A; and with the approbation of his creditors in said deed, conveyances of said lots of ground were made by the said George Peter in trust, to the said Thomas Peter, for the purposes therein set forth, as by the deeds marked F and G, herewith exhibited, will appear. The 11 lots of ground which were not conveyed by George Peter by his deed of the 9th April, 1824, but which were afterwards conveyed by the deeds marked F and G, were sold on the , for the sum of , all of which said sum has been received, and is now in the possession of the said Richard Smith.

Of this sum the Bank of the United States claims the sum of as the dividend to which said bank is entitled on account of the judgment in *the* their favor against the said G. Peter in the circuit court of the District of Columbia, for Washington county, herewith exhibited, marked H. This claim was resisted by Thomas Peter, in his lifetime, and since his death, by his representatives, and by George Peter, who is now by proper conveyances from the heirs of Thomas Peter, the trustee of George Peter, and authorized to carry into effect the provisions of the deeds marked A, F, and G, for the benefit of those concerned.

The said George W. Peter, trustee as aforesaid, or the representatives of Thomas Peter, claiming to be substituted in the place of the Union Bank of Georgetown, whose judgments were paid off in the manner herein stated, out of the proceeds of sale of the trust property conveyed by the deed marked A, and to have all the rights which the said Union Bank were entitled to in virtue of said judgments.

It is agreed that Thomas Peter was the endorser of his brother, G. Peter, upon G. Peter's notes mentioned in deed A, of a large amount, as will appear by the said deed A, and that a considerable amount of T. Peter's property has been sold to pay the said notes. That T. Peter did, in the month of April, 1834, and that J. P. C. Peter, and G. W. Peter, the complainants, were constituted the executors of the last will and testament of the said T. Peter.

It is further agreed that the matters in controversy, arising out of this statement, shall be submitted to the court in the name of George W. Peter, trustee of G. Peter, and George W. Peter, and John P. C. Peter, executors of T. Peter, deceased, as complainants, and Richard Smith and Bank of the United States, as the defendants, and that any alterations or amendments may be made at any time in the above statement of facts, and the chancery proceedings consequent thereon, either of substance or of form, so as to conform to the truth of the case, and to present the real question in controversy to the consideration of the court for their decision upon its merits.

Statement of Complainant's Counsel on the foregoing statement of facts.

The Union Bank of Georgetown had two judgments rendered in their favor on the 22d April, 1822, in the circuit court of the District of Columbia, for the county of Washington, for the sums stated in the short copies of said judgments herewith filed, and marked No. 1 and 2. These judgments bound all the real estate of the said George Peter, situate in the county and district aforesaid, and were a lien upon the same, as well all that part of his real estate, which was conveyed to his trustees by his trust and deed dated the 9th April, 1824, filed and marked A, as also the 11 lots of ground which were not conveyed by the said deed, but which were afterwards conveyed by the said George Peter by his deed filed, marked F and G, in the years 1829 and 1830, and the proceeds of which said eleven lots now form the subject of the present controversy. The claims of the Union Bank provided for by the deed dated 9th April, 1824, do not embrace the judgments in their favor rendered on the 22d April, 1822, no provision having been made in said deed for the payment of the said judgments. It cannot be denied but that the Union Bank had a perfect right to sell in virtue of their said judgments, the eleven lots of ground which were not conveyed by the deed of the 9th April, in the year 1824, and to apply the proceeds of sale of the 11 lots to pay off the said judgments, or such portion thereof as the said proceeds were capable of discharging. This was not done, but the Union Bank consented to receive out of the proceeds of sale of the trust property contained in the deed of the 9th April, 1824, which was made in September, 1829, payment of the said judgments. The sales of the said trust property named in the deed of the 9th April, 1824, produced the sum of , out of which said sum the said judgments of the Union Bank were paid.

The trust property conveyed by the deed aforesaid, of the 9th April, 1824, when sold, produced a sum of money which was greatly insufficient to pay off the creditors of the said George Peter, whose claims are provided for by the said deed, even if no part of the said sum had been applied to pay off and satisfy the said judgments of the Union Bank rendered in April, 1822, and which are here marked, No. 1 and 2.

By the payment of the said judgments in the manner herein stated, the trust funds were reduced by an amount equal to the sum which was substracted therefrom to pay off and satisfy the said judgments, and of course the rights and interests of every trust creditor named in the said deed, are affected thereby. It is contended that these trust creditors, whose money was taken to pay off the said judgments of the Union Bank, have a right to stand in the place of the said Union Bank, to have all the rights of the said Union Bank, and to claim in virtue of such substitution the whole proceeds of sale of of the said eleven lots of ground, and to be entitled thereto as fully as the said Union Bank in virtue of their aforesaid judgments.

This is a doctrine agreeable to equity, and has been repeatedly

sanctioned by the most solemn decisions of courts of justice in England, and in this country. In support of this position, a few of the many authorities on this subject are herewith cited:

In the case of Craythorne vs. Steinburn, 14 Vesey's Reports, page 162, it is decided that "Surety is entitled to every remedy which the creditor has against the principal debtor, to enforce every security, and all means of payment: to stand in the place of the creditor, not only through the medium of contract, but even by means of securities entered into without the knowledge of the surety, having a right to these securities transferred to him, though there was no stipulation for it, and to avail himself of all these securities against the debtor."

In the case of Cheseborough, and others, vs. Millard, and others, reported in the first volume of Johnson's Chancery Reports, page 409, it is ruled, "If a creditor has a lien on two different parcels of land, and another creditor has a subsequent lien on one only of the two parcels, and the prior creditor elects to take his whole demand out of the parcel of land on which the subsequent creditor has his lien, the latter is entitled either to have the prior creditor thrown upon the other parcel, or to have the prior lien assigned to him, for his benefit."

So, in the same case it was ruled, "If a bond creditor exacts the whole of his demand from one of the sureties, that surety is entitled to be substituted in his place, and to a cession of his rights and securities, as if he were a purchaser, either against the principal debtor or his co-securities."

This doctrine of substitution has been sanctioned by the courts of Maryland.

In 2d vol. Harris' and Gills' Rep't, page 305, it is ruled, "It is a general principal, that a security who has paid the debt may compel his co-security to make contribution, or may, by substitution, take the place of the creditor, and acquire all his rights against the principal debtor."

See also, 4th vol. Harris and Johnson's Rep'ts, page 522; 7th vol. Harris and Johnson's Rep'ts, page 134. These authorities, it is conceived, clearly establish the position, that immediately upon the payment to the Union Bank of their said judgments against George Peter, out of the trust funds, the trust creditors in the deed of the 9th April, 1824, were entitled to an assignment of the said judments by the Union Bank, for their benefit. Had these judgments been so assigned and entered for the use of the cestui que trusts in the said deed, it cannot be questioned, but that in virtue of the lien created by the said judgments, and then subsisting, the said eleven lots of ground might have been sold upon writs of fi. fa., issued upon said judgments, and the whole proceeds of sale, of right, applied to the benefit of the said cestui que trusts, to the entire exclusion of the claim now set up by the defendants; its not having then been done, shall not be permitted now to prejudice the just claim of the complainants, since equity, which delights to do justice, and looks upon that as having been done, which in conscience ought to have

been done, will now interpose its assistance, and will subrogate the trust creditors in the deed of the 9th April, 1824, to all the rights and remedies, legal and equitable, which the Union Bank were entitled to in virtue of their said judgments.

Bill of Complaint in the aforesaid Cause.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington, in chancery sitting:

The bill of complaint of George W. Peter, the Farmers and Mechanics Bank of Georgetown, the President and Directors of the Union Bank of Georgetown, Darius Claggett, and George W. Peter, and John P. C. Peter, executors of the last will and testament of Thomas Peter, dec'd.

Humbly complaining, sheweth unto your honors, that on the 9th day of April, in the year 1824, George Peter being largely indebted to sundry persons and bodies corporate, and among others to the complainants, and being desirous of making provision for the payment of his said debts, by his deed of indenture of that date, conveyed to his brother, Thomas Peter, since deceased, and to Robert P. Dunlop, in fee simple, certain real estate, described in said deed, situate in Washington county, in the said district, as will appear by the said deed herewith filed, marked A, and which is prayed may be taken as a part of this bill of complaint. The said Robert P. Dunlop, on the day of , in the year , with the assent of the trust-creditors, and before any act done by him in acceptance of the said trust, released to the said Thomas Peter all his title to the said trust property, as will be seen by the deed marked B, herewith exhibited.

Your orators represent that the paper herewith filed, marked C, contain a list of the judgments rendered in your honorable court against the said George Peter, so far as the same are necessary to be known for the proper determination of the present matter in controversy. In the year 1829, at the request of the trust-creditors of George Peter, named in his deed of the 9th April, 1824, Thomas Peter constituted Richard Smith cashier of the Office of Discount and Deposit of the Bank of the United States, in the city of Washington, his agent and attorney, to conduct the sale of the said trust-property, and to distribute the same among the creditors entitled thereto, as will be seen by the paper herewith filed, marked D. The sale of the trust-property was made on the 17 and 18 September, 1829, and produced the sum of .

Your orators represent, that before the execution of the deed of the 9th April, in the year 1824, viz. on the 22 April, 1822, the Union Bank of Georgetown had obtained two judgments in your honorable court against the said George Peter, the grantor in the said deed, for the sum of 7,934, not provided for by the said deed; which said judgments bound the whole real estate of the said George Peter, situate in Washington county, in the said District of Columbia, and were

a lien upon the same? It was therefore agreed, at and before the sale of the said trust-property, by all the trust-creditors interested therein, that the said judgments in favor of the Union Bank of Georgetown, should be first paid out of the proceeds of the sales of the said trust-property; and accordingly Richard Smith, agent and attorney for Thomas Peter, trustee as aforesaid, paid to the said Union Bank out of the monies received by him from the sales of the said trust-property, the amount of their said judgments, [and took a receipt therefor, which is herewith filed, marked E.] Your orators further shew to your honors, that after the said sale was made, in September, 1829, it was discovered that there were eleven lots of ground situate in Washington, the property of the said George Peter, which had not been conveyed by his deed of the 9th April, 1824; and with the approbation of the trust-creditors in said deed, the said George Peter, by his deeds herewith filed, marked F and G, conveyed the said eleven lots of ground to the said Thomas Peter, [for the purposes set forth in said deeds,] as will be seen by reference being had to the said deeds, marked F and G, the said eleven lots of ground were sold on the 17th Oct'r, 1829, and in May, in the year 1830, and produced the sum of $5,228 70, with int., the greater part of which said sum has been received by the said Richard Smith, and is now in his possession of this sum thus received; the Bank of the United States claims the sum of $2,468 02, as the dividend to which said bank is entitled, on account of the judgment in their favor against the said George Peter, in the circuit court of the District of Columbia for Washington county, herewith exhibited, marked H, and have directed the said Richard Smith not to pay over the same to the said trust-creditors, and the said Richard Smith has accordingly refused to distribute the said sum among the trust-creditors, [but holds the same subject to the order of your honors in the premises.]

Your orators shew to your honors, that this last mentioned claim of the Bank of the United States is not provided for by the trust-deeds of the said George Peter, marked exhibits A, F, and G, and that if the same be allowed great injustice will be done to your orators.

The complainants, John P. C. Peter, and George W. Peter, further represent, that their father, the late Thomas Peter, departed this life in the month of April, in the year 1824, having constituted them the executors of his last will and testament; that their father was the endorser of the notes of the said George Peter mentioned in exhibit A, as will appear by reference thereto; and that a considerable part of the said Thomas Peter's real estate in the District of Columbia, has been sold by the said Richard Smith, and the proceeds of sale applied to the payment of the notes of the said Geo. Peter, endorsed by the said T. Peter, mentioned in exhibit A, amounting to the sum. They therepray, that the said Richard Smith and the President and Directors of the Bank of the United States, be made defendants to this bill, and that they be compelled true answers to make to all and singular the allegations to this bill contained, as fully as if the same were repeated, and they interrogated thereto. May it please your honors to cause

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justice to be done in the premises to your orators, by causing distribution to be made of the said trust-funds according to equity and good conscience, and the provisions of the said trust-deeds marked A, F, and G.

And your orators pray your honors in the consideration of their case, to grant to them such other and further relief in the premises as may appear to your honors to be just and proper. And they will every pray, &c.

ROBERT P. DUNLOP,
Sol. for Compl'ts.

True copy:

Test: WILLIAM BRENT, *Clk.*